IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 71 OF 2006

Tata Memorial Centre and Anr. ....Petitioners.

vs.

Tata Memorial Hospital Workers

Union and Anr. .....Respondents

S.K. Talsania a/w. S.U. Uttam

i/by. Mulla and Mulla

for the petitioner.

Shobhna Gopal for the respondents.

CORAM: S.U. KAMDAR, J.

DATED: 31st March,2006.

JUDGMENT :

1. The present petition is filed inter-alia challenging the order dated 31.8.2005 passed by the 2nd Respondent under complaint (ULP) No. 919

of 2001. Some of the material facts of the present case are as under :

2. The petitioner is one Tata Memorial Centre and is inter-alia running a Tata Memorial Hospital and Cancer Research Centre. The Respondent no.1 is a recognised union of the petitioner herein. Since 1985 the respondent no.1. was recognised union under the provisions of The Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the 'MRTU and PULP Act'). Sometime in or about 1994 Tata Memorial Hospital Kamgar Sanghatana filed an application being application MRTU No. 15 of 1994 and application MRTU 16 of 1994 for cancellation of the recognition of the respondent no.1. The said recognisation of respondent no.1 was consequently cancelled. On 29.6.2001 the registration of the respondent no.1 union was restored and the respondent no.1 regained the status as a recognised union in the petitioner hospital.

3. After the passing of the order dated 29.6.2001 the respondent no.1 addressed a letter dated 7.7.3002 to the petitioner informing that the status of the respondent no.1 as a recognised union has been restored.

4. On 9.8.2001 a meeting took place between the representative of the petitioner and the representative of the respondent no.1 union when the issues were raised about the various facilities advanced to Tata Memorial Hospital Kamagar Sanghatana which is not a recognised union. On 10.8.2001 the respondent no.1 recorded a fact that the petitioners are encouraging the other unions and infact have provided the premises inside the establishment for running the activities of the said union. On 14.8.2001 the petitioners addressed a letter to the respondent no.1 inter-alia informing that they have asked the other unions to remove their notice board. Further they deny the allegations that the petitioners are instigating the other unions to take offensive action against the respondent no.1.

Immediately thereafter since the petitioners did not take necessary steps the respondent no.1 union filed a complaint under the provisions of the MRTU and PULP Act being complaint (ULP) no. 919 of 2001 and it was inter-alia alleged that the petitioners are showing favouritism and encouraging the activities of the union which is not a recognised union namely Tata Memorial Hospital Kamagar Sanghatana. In the said complaint the respondent no.1 also claimed various rights and privileges as applicable to the recognised union exclusively, including the right to collect subscription of employees for membership of the employees in the union, facility of notice board and having premises in the said establishment. In the complaint it was also pointed out that the petitioners are encouraging the rival unions by supporting the activities of the said union by providing the premises in the establishment and collecting the subscription on their behalf. The petitioner filed a written statement to the said complaint. After hearing the parties and recording the evidence the

authority passed an impugned order dated 31.8.2005 inter-alia holding that the petitioners have committed unfair labour practice under items 2(a), (b) of Schedule II and under item 9 of the Schedule IV of the MRTU and PULP Act.

5. Being aggrieved by their order the petitioners have filed the present petition . Learned counsel appearing for the petitioners has contended that the impugned order is totally illegal and unlawful. It is his contention that no case has been made out of unfair labour practice under item 2(a), (b) of Schedule II. He has contended that even if the petitioners have provided the premises to the said rival unions within the establishment and further the petitioners are deducting the subscription from the employees as per the directions of the said unrecognised union still the petitioners cannot be charged with unfair labour practice as contemplated under item 2(a) and (b) of Schedule II of MRTU and PULP Act. It is on this ground that the petitioner has challenged the impugned

order.

6. In so far as the aforesaid contention of the petitioner is concerned I have considered the submissions made. I have also considered the impugned judgment and order passed. There is no dispute that the respondent no.1 is a recognised union since 1984 and even today it is a recognised union functioning under the Act. The controversy about the recognition of the respondent no.1 union as a recognised union was contested right upto High Court and the same has been maintained. The learned Trial Court while considering the complaint has gone into various aspects of the matter. In para 20 of the impugned order he has considered the allegations of commission of unfair labour practice and has come to the conclusion that on evidence it is established that other unrecognised unions are functioning in the respondent company and that the said unrecognised unions are allowed to display their notice board in the premises. The petitioners have willingly provided them an helping hand by providing the

office premises and also helping them in collecting funds through membership subscription collected by the management by deductions from the salary and therefore the petitioners are indulging in unfair labour practices.

7. In so far this aspect of the matter is concerned it is more essential to understand the provisions of law where the rights of recognised unions are stipulated vice-a-versa the rights of unrecognised unions. The provisions of Section 20 gives some right to recognised union which includes collection of contribution payable by the members to the union on the premises, where wages are paid to them, to put up a notice board on the premises and to hold discussion on the premises with the employees concerned and to have place in the premises for running their activities but in context thereto under Section 22 rights of unrecognised unions are only to meet and discuss with the employer or any person appointed by him the grievances of any individual member relating to his discharge, removal, retrenchment,

termination of service and suspension and to appear on behalf of any member in a domestic inquiry. The provision of Section 20 and 22 reads as under :

> **"20. Rights of recognised union:-**
>
> (1) Such officers, members of the office staff and members of a recognised union as may be authorised by or under rules made in this behalf by the State Government shall, in such manner and subject to such conditions as may be prescribed have a right..-
>
> (a) to collect sums payable by members to the union on the premises, where wages are paid to them;
>
> (b) to put up or cause to be put up a notice board on the premises of the undertaking in which its members are employed and affix or cause to be affixed notice thereon;
>
> (c) for the purpose of the prevention or settlement of an industrial dispute,-
>
> (i) to hold discussion on the premises of the undertaking with the employees concerned, who are the members of the union but so as not to interfered with the due working of the undertaking;
>
> (ii) to meet and discuss, with an employer or any person appointed by him in that behalf,

the grievances of employees employed in his undertaking.

(iii) to inspect, if necessary, in an undertaking any place where any employee of the undertaking is employed;

(d) to appear on behalf of any employee or employees in any domestic or departmental inquiry held by the employer.

(2) Where there is a recognised union for any undertaking,-

(a) that union alone shall have the right to appoint its nominees to represent workmen on the Works committee constituted under section 3 of the Central Act;

(b) no employee shall be allowed to appear or act or be allowed to be a represented in any proceedings under the Central Act (not being a proceeding in which the legality or propriety of an order or dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee is under consideration), except through recognised union and the decision arrived at, or order made, in such proceeding shall be binding on the employees in such undertaking;

and accordingly the provisions of the Central Act, that is to say the Industrial Disputes Act, 1947 XIV of 1947, shall stand amended in the manner and to the extent specified in Schedule I.

22. Rights of unrecognised unions:- Such officers, members of the office staff and members of any union (other than a recognised union) as may be authorised by

> or under the rules made in this behalf by the STate Government shall, in such manner and subject to such conditions as may be prescribed, have a right-
>
> > (i) to meet and discuss with an employer or any person appointed by him in that behalf, the grievances of any individual member relating to his discharge, removal, retrenchment, termination of service and suspension:
> >
> > (ii) to appear on behalf of any of its members employed in the undertaking in any domestic or departmental inquiry held by the employer.

8. In the light of the provisions of the aforesaid sections it is very clear that it is only the right of the recognised union to have the subscription collected through the deduction of the wages. It is only the recognised union which can put up a notice board and only a recognised union is entitled to have office premises on the establishment for carrying out its activities which are defined under the provisions of Section 20 of the said Act. Admittedly in the present case the petitioner is encouraging the other unions by helping them out by providing those

facilities which are reserved for the recognised union under the Act. In the light of the aforesaid fact in my opinion the finding of the learned Industrial court holding that an unfair labour practice has been carried out under item 2(a) and (b)of Schedule II has been satisfied. The provisions of item 2 Schedule II provides that if an employer dominates, interfere with or contributes or supports financially or otherwise to any union i.e. to say the employer taking an active interest in organising the union of his employees and a employer showing partiality or granting favour to one of several unions, attempt to organise his employees or to its members where such a union is not a recognised union it would amount to unfair labour practice. In the present case undoubtedly the petitioners are supporting financially or otherwise an unrecognised union by providing them the facilities which are reserved exclusively for the recognised unions under the provisions of Section 20 of the MRTU and PULP Act and thus in my opinion the Industrial court has rightly held that the petitioner has committed an

unfair labour practice. Even at the hearing of the petition the petitioner has reiterated with to continue to support the said rival unrecognised union in the same manner by continuing to provide the same support. In my opinion the rights once reserved for the recognised unions it is the duty of the petitioner employee to continue to grant the said rights to the recognised union only and to none else. By providing a help to unrecognised union which is reserved exclusively for a recognised union the petitioners are indulging in unfair labour practice and therefore I find no substance in the petition. Petition fails. Accordingly petition dismissed.

. C.C. expedited.

sd/-

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